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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 766.

EDWARD K. BARSKY, ET AL., *Petitioners,*

v.

UNITED STATES OF AMERICA.

BRIEF OF SOUTHERN CONFERENCE FOR HUMAN WELFARE, AMICUS CURIAE.

JOSEPH FORER,
1105 K Street, N. W.,
Washington, D. C.
Counsel for Southern Conference for Human Welfare,

CLARK FOREMAN, *President.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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I.

The Southern Conference for Human Welfare is an organization whose purpose, as stated in its by-laws, is "to promote the general welfare and to improve the economic, social, political, cultural, and spiritual condition of the people of the South, without regard to race, creed, color, or national origin." Pursuant to the consents of the parties hereto the Southern Conference for Human Welfare files this brief, as amicus curiae, in support of the petition for certiorari, because it believes that the issues involved have a vital bearing on its program and purposes.

The plain fact is that the depressed status of the negro and poorer white classes in the South is a function of an economic dominance of the South by various interests and groups existing in both North and South. This economic dominance is supported by a political control of municipal and state governments and of federal primaries, and is characterized by the effective disfranchisement of a large portion of the population.

Against so formidable and well-entrenched a system, having at its disposal the powers of the state, individuals of opposing interests cannot peacefully compete unless they are free to assemble, to propagate their views, and to organize to unite their efforts and strength. Naturally enough, therefore, the dissenting individuals and groups constantly encounter restrictions on their constitutional freedom to assemble, to speak, and to organize. These restrictions are both governmental and extra-governmental, as, for example, ordinances against non-segregated meetings and mob lynchings.

It is a grievous circumstance that the federal government has actively participated in the repression of the liberties of those who seek a more progressive South. This participation has been taken through the medium of the Committee on Un-American Activities of the House of Representatives. The Committee, acting under the guise of an "investigative" agency, has conducted a vigorous and unremitting campaign of propaganda and censorship by "exposure" and blacklisting, designed to intimidate individuals into surrendering their rights of speech and assembly and to discredit liberal organizations. Justice Edgerton's dissenting opinion below cites enough documented instances of this campaign to render further citations superfluous.

The technic of the Committee has been to stage hearings as "investigations," to issue reports as "findings," and to compile blacklists, all on the theory that it is exposing a Communist menace. Having managed to create a hysterical fear and hatred of Communism, both doctrinal and ac-

tive, it proceeds to damage organizations and individuals by smearing them with a red brush dipped into a solution of distortions and falsifications. *Cf.* Gellhorn, *Report on a Report of the House Committee on Un-American Activities,* 60 Harv. L. Rev. 1193, dealing with the Committee's attack on the Southern Conference for Human Welfare.

The federal government, therefore, through a statutory agency, the Committee on Un-American Activities, has added restriction of speech and assembly by "investigation," "exposure" and blacklisting to the non-federal restrictions encountered in the South and elsewhere by liberal movements. The actions of the Committee are of a piece with ordinances against non-segregated meetings and mob lynchings. Each case simply presents a mechanism to prevent effective, peaceful and constitutional advocacy of changes detrimental to the economic interests of privileged groups.

II.

In the light of this harsh reality, the majority opinion below is seen to be impertinent. The issue is not whether Congress may constitutionally inquire into political beliefs (though we think it plain enough that it may not), but whether Congress may suppress political expression under the pretext of making an inquiry. The issue is not whether the implied power to investigate may be exercised to determine whether a clear and present danger is posed by types of speech and assembly, but whether Congress may restrain whatever speech and assembly it considers distasteful if only it does so under a recital that it is merely investigating.

Obviously the true issues, and even perhaps the fictitious issues, are of grave moment. Whether the Committee on Un-American Activities may continue to employ compulsory process is a question of great importance to every liberal and reformist cause and to the future of our democratic institutions. This question likewise involves signifi-

cant legal issues as to the meaning, effect and vitality of the Constitution. Moreover, these issues, we submit, were erroneously disposed of below, and regardless of error were inadequately considered.

The *Barsky* case is, finally, an appropriate controversy for the review of these important issues by this Court. The activities of the Committee on Un-American Activities have been made possible by a legislative grant to the Committee of a power to compel testimony which is in no way limited by the vague and meaningless definition of the Committee's jurisdiction. By resisting the assertion of this power, the petitioners properly call into question the validity of the power. *In re Chapman,* 166 U. S. 661; *Sinclair* v. *United States,* 279 U. S. 263; *Jurney* v. *MacCracken,* 294 U. S. 125.

CONCLUSION.

The writ of certiorari should issue as prayed for by petitioners

Respectfully submitted,

JOSEPH FORER,
1105 K Street, N. W.,
Washington, D. C.
Counsel for Southern Conference for Human Welfare,

CLARK FOREMAN, *President.*